

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SCOTT FRANCIS ICEBERG,

Plaintiff,

v.

KING COUNTY SUPERIOR COURT, et al.,

Defendants.

Case No. C20-1595RSM

ORDER GRANTING MOTION TO  
DISMISS

**I. INTRODUCTION**

This matter comes before the Court on Defendants' Motion to Dismiss. Dkt. #18. Plaintiff Scott Iceberg has filed a Response opposing this Motion. Dkt. #23. For the reasons stated below, the Court GRANTS the Motion and DISMISSES this case. The Court notes that Plaintiff has filed a Notice of Unavailability from January 1 to March 1, 2021, Dkt. #24. This notice does not in any way restrict the Court's ability to rule on the instant Motion. The Court does not require a response from Plaintiff, and in any event the Court notes that Plaintiff filed his Response to the instant Motion on January 7, during that period.

**II. BACKGROUND**

For purposes of this Motion to Dismiss the Court will accept all facts in the Amended Complaint, Dkt. #15, as true. The Court will briefly summarize only those facts necessary for ruling on this Motion.

Plaintiff states he is "a disabled individual who was denied any accommodation necessary to access the King County Superior Court in the matter of Iceberg v. Greenthumb, and is currently being denied any accommodation necessary to access the King County Superior

1 Court in the matter of Iceberg v. University of Washington.” *Id.* at 1. He argues he was denied  
2 the reasonable accommodation of the appointment of counsel, although King County Superior  
3 Court has provided an attorney to other disabled individuals. He also claims he was denied the  
4 reasonable accommodation of the appointment of a psychologist. He brings causes of action for  
5 violations of the Americans with Disabilities Act (“ADA”), the Rehabilitation Act, and the  
6 Washington Law Against Discrimination (“WLAD”), as well as constitutional claims for  
7 denying him access to the courts. *Id.* at 7–8. Plaintiff seeks \$100,000 in monetary damages and  
8 retrospective declaratory relief against King County, Judges Regina Cahan and Suzanne  
9 Parisien, and superior court Deputy Chief Administrative Officer Linda Ridge.

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11 Defendants have submitted King County Superior Court records from the cases cited in  
12 the Complaint and the Court finds it may take judicial notice of these public records without  
13 converting this motion to dismiss into a motion for summary judgment.

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15 In January 2020, Plaintiff filed a complaint in King County Superior Court against  
16 defendant Green Thumb Gardening, LLC, alleging public nuisance and outrage. *See* Dkt. #19  
17 (“Declaration of John R. Zeldenrust”), Exhibit 1(a). Plaintiff alleged Green Thumb, in the  
18 course of performing landscaping duties for the Trillium Apartments (where he apparently  
19 resides), obstructed fire hydrants and fire lanes at the apartment complex, posing an “imminent  
20 threat” to the health and safety of the residents. *Id.* Plaintiff alleged that he is disabled, and  
21 suffers from “PTSD, Panic Disorder, Generalized Anxiety Disorder, Major Depressive  
22 Disorder, and Severe Ulcerative Colitis.” He asserted that Green Thumb’s actions aggravated  
23 his disabilities. Iceberg requested \$100,000 in damages. *Id.*

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26 Plaintiff filed a request seeking the appointment of counsel under the state court rule GR  
27 33. Iceberg’s GR 33 accommodation request was assigned to King County Superior Court  
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Judge Regina Cahan, who denied it on February 18, 2020. *Id.*, Ex. 1(c) at 4. Judge Cahan found that Plaintiff had been able to file “well organized, articulate written responses” and that he had “a history of filing lawsuits, demonstrating his ability to access the court.” *Id.* at 3. Judge Cahan determined that “GR 33 was not intended as a mechanism for litigants with limited income or mental health challenges to obtain court-appointed attorney[s] in civil lawsuits,” and that appointing counsel would impose an undue financial burden for the court. Judge Cahan further determined that GR 33 “does not appear to . . . contemplate appointing a clinical psychologist for Mr. Iceberg.” *Id.*, Ex. 1(c) at 3–4.

Defendant Green Thumb moved to dismiss Iceberg’s complaint under Civil Rule 12(b)(6) for failure to state a claim. *Id.*, Ex. 1(e). By order dated March 10, 2020, the superior court granted Green Thumb’s motion and dismissed the case with prejudice. *Id.*, Ex. 1(f).

On May 19, 2020, Iceberg filed a second action, this time against the University of Washington. *See Iceberg v. University of Washington*, KCSC # 20-2-09079-4 SEA. The case was assigned to Judge Kenneth Schubert. *Id.*, Ex. 2(b). Plaintiff again requested the appointment of counsel as a reasonable accommodation under GR 33. By order dated July 1, 2020, Judge Schubert denied Iceberg’s request for essentially the same reasons cited by Judge Cahan in *Iceberg v. Green Thumb*. *See Id.*, Ex. 2(c).

### III. DISCUSSION

#### A. Legal Standard under Rule 12(b)(6)

In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as true, and makes all inferences in the light most favorable to the non-moving party. *Baker v. Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted). However, the court is not required to accept as true a “legal conclusion couched as a factual

allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met when the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The complaint need not include detailed allegations, but it must have “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility, a plaintiff’s claims must be dismissed. *Id.* at 570.

Where a complaint is dismissed for failure to state a claim, “leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

## **B. Analysis**

Defendants argue that Plaintiff’s claims seeking monetary damages or retrospective injunctive relief against judges in their official or individual capacities are barred by the Eleventh Amendment and the doctrine of judicial immunity. *See* Dkt. #18 at 7–8. Defendants state:

Iceberg seeks a \$100,000 in damages and declaration by this Court under various theories that the Judicial defendants violated his rights in the state court actions of Iceberg v. Green Thumb (which has been dismissed) and Iceberg v. University of Washington, which appears to remain pending. Thus, his suit seeks monetary relief and retrospective relief only, and it is barred under the Eleventh Amendment and Judicial immunity.

*Id.* at 8. Defendants also argue that Plaintiff fails to state a claim against newly added Defendant Linda Ridge. *Id.* at 9. Defendants point out that Plaintiff’s claims for declaratory

1 relief under the Washington constitution and the WLAD (RCW 49.60)) fail because he did not  
2 file a tort claim for damages before bringing suit. *Id.* (citing *Cronk v. City of West Richland*,  
3 2015 WL 853863 (E.D. Wash. Feb. 26, 2015)). Defendants argue that Plaintiff has failed to  
4 plead that King County (or any Defendant for that matter) discriminated against him because of  
5 his disability. Dkt. #30 at 2.  
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7 The Court finds that Plaintiff fails to allege sufficient factual matter, accepted as true, to  
8 state a claim to relief under the ADA, WLAD, or U.S. or Washington State Constitutions.  
9 Claims against certain Defendants can easily be dismissed with prejudice. Defendants have  
10 correctly pointed out how claims brought against the judges and court staff are barred under the  
11 doctrine of judicial immunity and the Eleventh Amendment. Defendants argue that claims  
12 against King County Superior Court must be dismissed, however Plaintiff has already amended  
13 his pleadings to bring suit against King County instead. *See* Dkts. #9 (original Complaint) and  
14 #15 (Amended Complaint). Defendants are correct that the Amended Complaint fails to allege  
15 that Plaintiff was discriminated against because of his disability, but this is not entirely relevant  
16 because he instead claims that he was denied a reasonable accommodation.  
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19 Title II of the ADA, 42 U.S.C. §§ 12131-12165 (2012) prohibits public entities from  
20 discriminating against qualified individuals with disabilities in public accommodations. A  
21 public entity must provide a reasonable accommodation where necessary to provide meaningful  
22 access to individuals with disabilities, including “an equal opportunity to participate in, and  
23 enjoy the benefits of, a service, program, or activity conducted by a public entity.” 28 C.F.R. §  
24 35.160(b)(1) (2009).  
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26 A person alleging a Title II violation must show that (1) he is a qualified individual with  
27 a disability; (2) he was excluded from participation in or denied the benefit of a public entity’s  
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1 services, programs, or activities, or the public entity otherwise discriminated against him; and  
2 (3) the exclusion, denial, or discrimination was by reason of his disability. *Duvall v. Kitsap*  
3 *County*, 260 F.3d 1124, 1135 (9th Cir. 2001). When a public entity receives a request for an  
4 accommodation it must conduct a fact-specific investigation to determine the appropriate  
5 accommodation under the circumstances. *Duvall*, 260 F.3d at 1139. But a public entity has an  
6 affirmative defense if it shows that the requested accommodation would impose an undue  
7 financial or administrative burden. *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999).

9 Similarly, the WLAD requires all places of public accommodation to provide people  
10 with disabilities an equal opportunity compared to people without disabilities. *Fell v. Spokane*  
11 *Transit Auth.*, 128 Wn.2d 618, 631, 911 P.2d 1319 (1996). A plaintiff alleging disability  
12 discrimination must show that (1) he has a recognized disability, (2) the defendant operates a  
13 place of public accommodation, (3) the defendant discriminated against the plaintiff by  
14 providing treatment that was not comparable to the level of services enjoyed by persons without  
15 disabilities, and (4) the disability was a substantial factor causing the discrimination. *Id.* at 637.  
16 But the defendant has not engaged in unlawful disability discrimination if its failure to  
17 accommodate the plaintiff rests on a legitimate and nondiscriminatory reason, including  
18 financial unfeasibility. *Id.* at 642.

21 Plaintiff cites no case finding that a court violated the ADA, WLAD, or Washington or  
22 U.S. Constitutions for failing to provide an attorney or psychologist as a reasonable  
23 accommodation. Given judicial immunity, it is perhaps impossible for King County to be liable  
24 for the rulings of its judges on GR 33 motions, such liability not been established here, and in  
25 any event the pleading does not demonstrate that the judges here violated these laws. The  
26 pleadings and judicially-noticed documents show that Judges Cahan and Schubert conducted a  
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fact-specific investigation to determine the appropriate accommodation under the circumstances and determined that a) that Plaintiff did not have a problem accessing the court and b) the cost of appointing an attorney or psychologist was not feasible. The record demonstrates that Plaintiff has been able to access the Court, multiple times, without the aid of counsel. The Court finds that this Amended Complaint thus fails to contain sufficient factual matter, accepted as true, to state a claim to relief under these laws that is plausible on its face.

More fundamentally, Plaintiff is not suing the remaining Defendant King County for some county policy denying him access to the court, he is suing because he disagrees with the rulings of Judges Cahan and Schubert. Although GR 33 may permit the appointment of counsel under certain conditions, such is at the discretion of the state court after considering many factors. This Court will not weigh in on whether GR 33 was properly applied in the underlying cases. Plaintiff may appeal the state court decisions directly.

Given all of the above, the Court cannot imagine how the above deficiencies with Plaintiff's claims against King County could possibly be cured and those claims will be dismissed without leave to amend.

#### IV. CONCLUSION

Having reviewed the relevant pleadings and the remainder of the record, the Court hereby finds and ORDERS that Defendants' Motion to Dismiss, Dkt. #18, is GRANTED. Plaintiff's claims are DISMISSED WITH PREJUDICE. This case is CLOSED.

DATED this 4<sup>th</sup> day of February, 2021.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE